

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
JACKSON DIVISION

CONNIETTE BASS

PLAINTIFF

VS.

CIVIL ACTION NO. 3:05cv692-WHB-LRA

JO ANNE B. BARNHART,
Commissioner of Social Security

DEFENDANT

OPINION AND ORDER

This cause is before the Court on Plaintiff's Objection to the January 19, 2007, Report and Recommendation of United States Magistrate Judge Linda R. Anderson. Judge Anderson found that Defendant's decision to deny Plaintiff's application for Supplemental Security Income Benefits was supported by substantial evidence and, therefore, should be affirmed.

A district judge has authority to review a magistrate judge's report and recommendation on dispositive motions, and is required to make a *de novo* determination of any portion of a report and recommendation to which a specific written objection is made. See 28 U.S.C. § 636(b); FED. R. CIV. P. 72(b). Thereafter, the district judge may accept, reject, or modify the recommendation of the magistrate; receive further evidence in the case; or recommit the matter to the magistrate with further instructions. Id.

In the case *sub judice*, Plaintiff objects to the findings of Judge Anderson regarding whether it was proper for the Administrative Law Judge ("ALJ") to reject the "opinion" of her treating physician, Dr. Andrew Bishop, without considering the six-factor test set forth in 20 C.F.R. § 404.1527(d), and as outlined in Newton v. Apfel, 209 F.3d 448 (5th Cir. 2000). On this issue, Judge Anderson found that under Newton: "[A]n ALJ may reject the opinion of the treating physician only if the ALJ performs a detailed analysis of the treating physician's views under the criteria in 20 C.F.R. § 404.1527(d)(2)." See Report and Recommendation [Docket No. 15] at 8. Judge Anderson additionally found that Dr. Bishop had not provided any medical opinion regarding: (1) whether Plaintiff was "disabled from all work," (2) the manner in which Plaintiff's "mental impairments restricted her ability to perform work related activities," or (3) the type of "activities she could still perform despite her mental impairment" and, therefore, that Newton and 20 C.F.R. § 404.1527(d) were not implicated. Id. at 8-9, 12.

Having considered Plaintiff's Objection, the Court finds that Judge Anderson's Report and Recommendation is well reasoned and sufficiently supported by applicable law. First, the Court finds, as did Judge Anderson, that the medical records of Dr. Bishop do not establish that he ever offered a "medical opinion", as that term is defined under the Federal Regulations, regarding

whether Plaintiff was disabled. As an evaluation under the factors in 20 C.F.R. § 404.1527(d) is only required in cases in which the ALJ determines that a medical opinion is not entitled to controlling weight, the Court finds no basis for concluding that the ALJ is required to evaluate these factors in a case, such as the one *sub judice*, in which no medical opinion regarding disability was offered. Second, the ALJ adopted the opinions of Dr. Stella Brown and Dr. David Powers regarding Plaintiff's mental functional capacity, and found that Dr. Bishop's treatment records did not conflict with those opinions. See Walker v. Barnhart, No. 04-31256, 158 Fed. Appx. 524, 535 (5th Cir. 2005) (finding that the United States Court of Appeals for the Fifth Circuit does "not require consideration of each of the factors set out in Newton, where ... "there is competing first-hand medical evidence and the ALJ finds as a factual matter that one doctor's opinion is more well-founded than another.") (citing Newton, 209 at 458). The Court additionally finds that the decision of the ALJ was supported by substantial evidence, and included no legal errors that would require the Court to reverse the decision. Accordingly, the Court hereby adopts the Report and Recommendation over the objection by Plaintiff.

For the foregoing reasons:

IT IS THEREFORE ORDERED that the Report and Recommendation of the Magistrate Judge [Docket No. 15] is hereby accepted and adopted.

IT IS FURTHER ORDERED that Plaintiff's Objection to the Report and Recommendation [Docket No. 16] is hereby denied.

IT IS FURTHER ORDERED that Plaintiff's Motion for Summary Judgment [Docket No. 9] is hereby denied.

IT IS FURTHER ORDERED that Defendant's Motion for an Order Affirming the Decision of the Commissioner [Docket No. 11] is hereby granted. A Final Judgment dismissing Plaintiff's appeal shall be entered this day.

SO ORDERED this the 2nd day of March, 2007.

s/ William H. Barbour, Jr.
UNITED STATES DISTRICT JUDGE